

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD H. FLEMING and DEPARTMENT OF THE TREASURY,
GOVERNMENT PRINTING OFFICE, Washington, DC

*Docket No. 00-1483; Oral Argument Held on May 22, 2002;
Issued July 10, 2002*

Appearances: *Gerald C. Baker, Esq.* for appellant; *Julia Mankata, Esq.*, for the Director, Office
of Workers' Compensation Programs.

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs met its burden of proof in terminating appellant's compensation benefits effective February 29, 2000 on the grounds that his work-related disability had ceased on or before that date.

On June 4, 1987 appellant, then a 45-year-old keyboard operator, filed a claim (Form CA-1) for disability on June 3, 1987 alleging that a fellow employee attacked him by grabbing his throat and caused him to fall to the ground injuring his throat, neck, hands, left wrist and knees. He stopped work on June 3, 1987 and did not return. By decisions of August 26, October 28 and December 29, 1987, appellant's claim was accepted for cervical sprain and contusion to hands, knees and left wrist. He was placed on the periodic rolls and received appropriate compensation.

The record contains numerous reports from appellant's physicians, including his primary treating physician, Dr. Joseph Basile, an orthopedic surgeon.¹

In a report dated May 30, 1996, Dr. Basile stated that appellant continued "to have considerable constellation of symptoms principally related to his left wrist, lower back, base of his neck, shoulders and head." He stated further that appellant had "no appreciable changes except perhaps a worsening of his subjective complaints referable to these areas." Dr. Basile conducted a physical examination of the cervical spine and noted it was considerably symptomatic particularly with compression and distraction and the range of motion was limited. He further indicated that the tendon reflexes were fine, the lower back revealed severe limitation

¹ The initial reports are not listed as the Office accepted the claim and appellant mainly treated with Dr. Basile.

of range of motion and considerable paraspinal spasm. Dr. Basile indicated that appellant had significant tenosynovitis of the left wrist along with soft tissue injuries related to his back and a severe cervical strain. He again opined that the symptoms related to appellant's lower back, neck and wrist were directly related to his work injury of June 3, 1987 and they were permanent.

By letter dated November 10, 1997, the Office referred appellant, along with the medical evidence of record, together with a statement of accepted facts and a list of questions to be resolved, to Dr. Charles Stone, a Board-certified orthopedic surgeon, for a second opinion regarding the status of appellant's work-related condition.

In a December 16, 1997 report, Dr. Stone provided a history and results on examination. He diagnosed: preexisting nonwork aggravated degenerative arthritis of the cervical spine; preexisting nonwork-related left scapholunate arthrodesis with radiocarpal and intercarpal degenerative arthritis, as well as a solid arthrodesis of the proximal interphalangeal and distal interphalangeal joints of the left ring and middle fingers. Dr. Stone reported that appellant had carpal tunnel syndrome on clinical examination; prostatic disease by history; chronic ankle sprain and heel spur; in addition to gastrointestinal disturbance with swallowing difficulty. He opined that they were not caused or aggravated by appellant's work injury of June 3, 1987. Dr. Stone opined that appellant had fully recovered from the accepted work-related conditions of cervical sprain, bilateral hand contusions, left wrist contusion and bilateral knee contusions sustained in the performance of duty on June 3, 1987 by a coworker.

By letter dated January 13, 1998, the Office issued proposed notice of termination of compensation. The Office advised appellant that his compensation for wage-loss and medical benefits was being terminated because he no longer had any continuing injury-related disability. The Office indicated that the weight of the medical evidence, as demonstrated by the opinion of Dr. Stone, demonstrated that appellant's work injury had resolved. Appellant was given 30 days to submit additional evidence or argument.

In a January 19, 1998 report, Dr. Basile explained that appellant's last visit was July 1997, for his six-month follow up and for new problems related to the cervical spine. He indicated that he scheduled appellant for a magnetic resonance imaging (MRI) scan. Dr. Basile indicated that appellant cancelled the MRI scan after having increased physiotherapy.

In a January 30, 1998 report, Dr. Basile explained that the assault by a fellow employee on appellant resulted in significant "reexacerbation" of an original injury incurred in 1982." He asserted that the "overwhelming medical evidence documented that the injury to [appellant's] cervical spine is most definitely a job-related injury." Dr. Basile explained that appellant's diagnosis of severe degenerative arthritis of the cervical spine and lumbosacral spine was well documented to be work related and that appellant was never without symptoms since the original work-related injury of 1982. He opined that the injury was permanent, progressive and most likely to worsen.

By decision dated May 13, 1998, the Office finalized its proposed termination of benefits effective May 24, 1998. The Office indicated that Dr. Stone's opinion remained the weight of the medical evidence and that the evidence of record established that appellant's injury-related disability had ceased.

By letter of May 20, 1998, appellant requested an oral hearing.

In a June 19, 1998 MRI report, Dr. Ronald H. Kihm, a Board-certified radiologist, made a finding of age-related spondylosis in the cervical spine. In a December 10, 1998 report, Dr. Carroll P. Osgood, a Board-certified neurosurgeon, stated that appellant continued to complain of recurrent posterior neck pains and detailed the deformity in appellant's left hand.

By decision dated February 18, 1999, a hearing representative determined that the case was not in posture for a hearing due to a conflict in the medical evidence between Dr. Basile, appellant's treating physician and Dr. Stone, the second opinion physician, regarding the issue of whether appellant continued to suffer residuals of the work-related injury. The hearing representative remanded appellant's case to be referred to an impartial medical specialist before the Office could issue a *de novo* decision.

By letter dated October 13, 1999,² the Office referred appellant, along with a statement of accepted facts, a set of questions and the medical record, to Dr. Peter James Ridella, a Board-certified orthopedic surgeon.

In a December 10, 1999 report, Dr. Ridella noted appellant's history of injury and treatment, and the statement of accepted facts. He stated that appellant suffered from preexisting conditions of cervical arthritis and deformity and disability to his left hand. Dr. Ridella also noted that the MRI scan of the cervical spine showed that he had degenerative changes at C5-6 with a bulging disc at C4-5, C5-6 and C6-7. He also indicated that appellant had a history of a work-related adjustment disorder as a result of his injury and a nonwork-related adjustment disorder as a result of his left hand. Dr. Ridella noted that appellant was under the care of multiple physicians for many years and apparently Dr. Gardner, a psychiatrist, did conclude that appellant could not return to his job at the government office because of an adjustment disorder that was connected to his nonwork-related disability as well as work-related adjustment disorder which would spontaneously resolve once he was no longer working. He indicated that appellant complained of moderate cervical pain but the range of motion of his cervical spine passively was full and on March 5, 1998, appellant continued to have significant subjective complaints of neck pain and back pain. Dr. Ridella stated that appellant also had an anxiety disorder that was work related since 1988, which was never truly dealt with or treated. He also agreed with Dr. Stone, the second opinion physician, that on the basis of appellant's contusions and neck injuries and complaints of pain that he should be able to resume his previous occupation as a keyboard operator. Further Dr. Ridella opined that appellant had recovered from the injuries based on the assault on an objective scale. He concurred with Dr. Stone noting that appellant could return to his employment if his case were construed to his work injury. Dr. Ridella indicated that appellant had recovered from these injuries and they would not preclude him from returning to his original job.

In a decision dated February 29, 2000, the Office terminated appellant's compensation and medical benefits on the grounds that his employment-related disability had ceased.

² The letter was originally dated May 4, 1999, but appellant did not receive it and a new letter was sent.

The Board finds that the Office met its burden of proof in terminating appellant's compensation benefits effective February 29, 2000 on the grounds that his work-related disability had ceased by that date.

Under the Federal Employees' Compensation Act,³ once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.⁴ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.⁵ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁶ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁷

In the instant case, the Office accepted appellant's claim for cervical sprain, contusion to hands, knees and left wrist.

Appellant's treating physician, Dr. Basile, reported that appellant continued to suffer from work-related injuries including spondylolysis of C7 area, multilevel disc degeneration, lower cervical root degeneration and that the injury to appellant's cervical spine was a job-related injury. Dr. Stone, the second opinion physician, opined that appellant had recovered from the work-related injuries of June 3, 1987 and that appellant's preexisting conditions were not caused, nor aggravated by the work injury of June 3, 1987. He indicated that appellant was able to resume without limitation, his previous occupation of keyboard operator. To resolve the conflict, the Office properly referred appellant, pursuant to section 8123(a) of the Act, to Dr. Ridella, for an impartial medical examination and opinion on appellant's continuing employment-related disability.

Section 8123 (a) of the Act provides that, if there is a disagreement between the physician making the examination for the United States and the physician of an employee, a third physician will be appointed to make an examination.⁸ Where there exists a conflict of medical opinion and the case is referred to an impartial medical specialist for the purposes of resolving the conflict, the opinion of such specialist is entitled to special weight if sufficiently well rationalized and based upon a proper factual review of the case.⁹

³ 5 U.S.C. §§ 8101-8193.

⁴ *Lawrence D. Price*, 47 ECAB 120 (1995).

⁵ *Id*; see *Patricia A. Keller*, 45 ECAB 278 (1993).

⁶ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁷ *Id*.

⁸ 5 U.S.C. § 8123(a).

⁹ See *Glen C. Chasteen*, 42 ECAB 493 (1991); *James P. Roberts*, 31 ECAB 1010 (1980).

In the instant case, Dr. Ridella, the impartial medical specialist, reported that appellant suffered from preexisting conditions of cervical arthritis and deformity and disability to his left hand. He stated that an MRI scan of the cervical spine showed that appellant had degenerative changes at C5-6, bulging at the C4-5, C5-6 and C6-7 discs. Dr. Ridella indicated that appellant had recovered from his work injuries. He also noted that appellant's preexisting conditions were not attributable to his work-related injuries and they would prevent him from pursuing his usual work.¹⁰

The Board finds that the weight of the medical evidence is represented by the thorough, well-rationalized opinion of Dr. Ridella, the impartial medical specialist selected to resolve the conflict in medical opinion. The December 10, 1999 report established that appellant had no disability due to his June 3, 1987 employment injury.

Dr. Ridella detailed appellant's factual and medical history and reported his findings on examination. He stated that appellant suffered from preexisting conditions of cervical arthritis and deformity and disability to his left hand and noted degenerative changes of the cervical spine at C5-6 with a bulging disc at C4-5, C5-6 and C6-7. Dr. Ridella also indicated that appellant had a history of a work-related adjustment disorder as a result of his injury and a nonwork-related adjustment disorder as a result of his left hand. He also opined that appellant had an anxiety disorder that was work related since 1988, which was never truly dealt with or treated.¹¹ Dr. Ridella concurred with Dr. Stone, the second opinion physician, that appellant should be able to resume his previous occupation as a keyboard operator and that appellant had recovered from the injuries based on the assault on an objective scale. He also stated that appellant could return to his employment if his case were construed to his work injury. Dr. Ridella indicated that appellant had recovered from these injuries and they would not preclude him from returning to his original job. His report was sufficient to establish that appellant no longer had residuals of his June 3, 1987 employment injury.

The Board has carefully reviewed the opinion of Dr. Ridella and notes that it has reliability, probative value and convincing quality with respect to its conclusions regarding the relevant issue of this case. Dr. Ridella's opinion is based on a proper factual and medical history in that he reviewed an accurate and up-to-date statement of accepted facts, provided a thorough factual and medical history and accurately summarized the relevant medical evidence. Moreover, he provided a proper analysis of the factual and medical history and the findings on examination, including the results of diagnostic testing and reached conclusions regarding appellant's condition which comported with this analysis.¹² Dr. Ridella provided medical rationale for his opinion by explaining that there was no objective evidence of the June 3, 1987

¹⁰ Although Drs. Stone and Ridella diagnosed appellant's psychiatric condition and suggested that it was a work-related adjustment disorder, resulting from his employment injury, appellant never filed a claim for an emotional condition resulting from his work injury and the Office never accepted the injury as causing a psychiatric condition. Appellant would bear the burden of proof in establishing such a condition. See *William Sircovitch*, 38 ECAB 756 (1987); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

¹¹ This was never accepted by the Office.

¹² See *Melvina Jackson*, 38 ECAB 443, 449-50 (1987); *Naomi Lilly*, 10 ECAB 560, 573 (1957).

employment injury. He further explained that appellant's continuing medical problems were due to his nonwork-related conditions including degenerative changes of the spine and a work-related adjustment disorder as well as a nonwork-related adjustment disorder.

The February 29, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
July 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member